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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,195	05/14/2001	Raymond Jeffrey May	KCC-14,280	8182

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EXAMINER
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REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/855,195	<b>Applicant(s)</b> MAY ET AL.	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 19-24 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) 30-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-24, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/04 and 11/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-8-04 has been entered.

### ***Claim Language Interpretation***

2. For purposes of the prior art rejections the claim language "targeted elastic material" is defined as set forth at page 7, lines 4-10, i.e. the elastic regions are made in the same process as is the elastic material or laminate made therefrom, i.e. separate manufacture of an elastic band and subsequent connection thereof to the underlying material to form the elastic material or laminate is not included. See however the discussion of product by process infra. It is noted that the terminology "absorbent composite structure", "attached", and "permanently bonded" have not been specifically defined by the Applicants and thus will be given their broadest customary interpretation, i.e. the dictionary definition, in light of the specification. As set forth on page 14, last paragraph, page 18, lines 6-19 and page 20, lines 7-8 of the specification, the absorbent composite is the cover, liner and absorbent where coextensive, the side panels may be separate pieces attached to the composite or integrally formed therewith, i.e. an extension of a component of the composite structure, and the targeted elastic material forms the panels, i.e. may be

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integrated therewith. Therefore, in light of the specification, and the dictionary definition of "composite", i.e. "made up of distinct components; compound", the terminology "absorbent composite" is defined as the absorbent, cover and liner where coextensive and the "linear side edge" thereof being the linear area where they are all no longer coextensive. The terminology "attached" and "permanently bonded" are defined as being direct or indirect permanent bonding or attaching of separate elements to form a unitary structure or direct or indirect permanent bonding or attaching so as to form a monolithic structure.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 19-22, 24 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Litchholt et al '919 in view of Van Gompel '052.

See Litchholt at Figures, col. 15, line 66-col. 16, line 21, col. 19, lines 59-61, col. 20, lines 52-55, col. 21, lines 21-23 and 50-55, col. 31, lines 37-43, col. 32, lines 5-8, col. 33, lines 22-24 and 29-30, col. 35, line 54-col. 36, line 24, col. 6, lines 35-39, and thus also Figures of '753 and col. 34, lines 47-63 of '092 incorporated thereby, i.e. the Litchholt reference teaches a diaper, training pant, feminine hygiene article or absorbent undergarment having a chassis including an absorbent composite structure of an absorbent assembly between a liner and a cover and front side panels and back side panels permanently bonded to and extending transversely beyond an associated linear side edge of an outermost layer of the absorbent composite structure, the chassis defines leg openings and a waist opening, there is elastic material in at least each of

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the front or back side panels which may comprise a plurality of narrow strands or filaments of different compositions including the claimed base polymers, e.g. S-I-S or S-B-S block copolymers, and the side panels can have differential extensibility along the longitudinal axis, i.e. from the waist edge to the leg edge. The elastic material is manufactured in-line or continuously with its carrier, i.e. the garment. Therefore, the Litchholt device includes all the claimed structure except for differential extensibility being explicitly disclosed as having high tension zones aligned along the waist and leg openings and a low tension zone therebetween. However, Van Gompel '052 discloses that a differential extensibility in a side section of a disposable garment includes a stretch gradient in which the intermediate portion can have greater or lesser stretchability than the end portions thereof adjacent the waist and leg openings and that such gradients are interchangeable with each other and other gradients such as increasing or decreasing from either the waist or leg opening. Therefore, to make the differential extensibility of Litchholt differential extensibility which includes high tension zones aligned with the leg and waist openings and a low tension zone therebetween as taught by Van Gompel instead, if not already, would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of substitution no needed to render such substitution obvious), i.e. the equivalents are the longitudinal stretch gradients which are interchangeable for their desired function of providing a nonuniform or differential extensibility, or would be obvious to one of ordinary skill in the art in view of the interchangeability of various differential extensibility patterns as taught by Van Gompel. While it is the Examiner's position that Litchholt expressly discloses a targeted elastic material as defined by Applicant it is noted that the language "targeted elastic laminate" as defined defines a

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product by process, see MPEP 2113, (i.e. even though product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process). It is further noted that the end product claimed is a garment not a targeted elastic material, i.e. if a garment of the prior art is the same as the end product in the claims, the claims are unpatentable even though it was not made in a single manufacturing process but rather through separate manufacture and subsequent connection. Therefore, even if Litchholt would teach a separately manufactured elastic band, since the end product of the prior art discussed supra is the same as the end product claimed, the claims are unpatentable.

With regard to the language added to claim 19, see the deleted language of claim 34. Also note the already cited portions of Litchholt et al supra, e.g., Figure 1 and col. 32, lines 5-8 and col. 33, lines 22-24 and col. 36, lines 8-24. See also discussion of Applicant's arguments *infra*.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Litchholt and Van Gompel as applied to claim 19 above, and further in view of Poirier.

In claim 23, Applicant claims the device being swimwear which capability or function the reference does not explicitly teach. However, see Prior Developments section of Poirier, i.e. it is well known that infants also wear diapers while in a pool, i.e. the diaper is worn while swimming. Therefore, to employ any prior art diaper such as taught by Litchholt and Van Gompel also while swimming would be obvious to one of ordinary skill in the art in that such is

well known as taught by Poirier and would provide the same benefits while swimming as while not swimming, i.e. body exudate capture.

### ***Response to Arguments***

6. Applicant's remarks have been considered but are deemed not persuasive because such are narrower than the claim language and the teachings of the prior art. For example, contrary to the remarks on page 7, first full paragraph the claims do not require material "consisting essentially of" two types of filaments and layers. Col. 35, line 54-col. 36, line 7 also does not teach away from differential extensibility. The specific example cited is but one embodiment, i.e. "an alternative embodiment". The entire passage clearly teaches that differential extensibility of the panel is desired and does not teach away from the claimed pattern of extensibility. With regard to "targeted" materials, attention is again invited to the prior art rejection supra.


### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
January 11, 2005